NEW YORK COURT OF APPEALS

ACE Securities Corp. v. DB Structured Products, Inc.

No. 34 (N.Y. June 16, 2022) · No. No. 34 · Decided June 16, 2022

SUMMARY

The New York Court of Appeals holds that CPLR 205(a), the statutory savings provision, is available only to the original plaintiff in a dismissed action, or in the specified circumstances to the plaintiff's executor or administrator. Because HSBC Bank USA, as trustee, was not the same plaintiff as the certificateholders who commenced the prior action, it could not invoke CPLR 205(a) to revive its otherwise time-barred claims against DB Structured Products. The Court affirms dismissal of the action.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Rivera; Judge Garcia; Judge Singas; Judge Cannataro; Judge Troutman; Judge Wilson
JURISDICTION	New York
DECIDED	June 16, 2022
DOCKET	No. 34
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order affirming dismissal of an untimely action brought by HSBC Bank USA, National Association, as trustee of a residential mortgage-backed securities trust, under CPLR 205(a).
STANDARD OF REVIEW	De novo review of the interpretation and application of CPLR 205(a).
PRECEDENTIAL VALUE	published precedential opinion of the New York Court of Appeals
PARTIES	ACE Securities Corp. v. DB Structured Products, Inc.

TOPICS

statute of limitations · civil procedure · statutory interpretation · contracts · trusts

PRACTICE AREAS

civil procedure · statute of limitations · statutory interpretation · contracts · trusts · commercial litigation

QUESTIONS PRESENTED

1. Whether CPLR 205(a) permits a new action by HSBC, as trustee, when the prior action was commenced by different certificateholder entities.
2. Whether HSBC may invoke the savings statute on the theory that it sought to enforce the same rights or the rights of the same trust as the prior plaintiffs.
3. Whether the statutory exception for executors and administrators supports extending CPLR 205(a) to a trustee or other entity different from the original plaintiff.

HOLDINGS

1. CPLR 205(a) permits a new action only when brought by the same plaintiff that prosecuted the original action, subject to the statute's limited exception for an executor or administrator when the original plaintiff dies and the cause of action survives.
2. HSBC was not the original plaintiff and could not invoke CPLR 205(a) to save its untimely complaint.
3. The remedial purpose of CPLR 205(a) does not overcome the statute's identity-of-plaintiff limitation.

KEY QUOTATIONS

> *"The effect of the statute is quite simple: if a timely brought action has been terminated for any reason other than one . . . specified in the statute, the plaintiff may commence another action based on the same transactions or occurrences within six months of the dismissal of the first action"* (at 6)

> *"Where, as here, the legislature has created one statutory exception—executors and administrators—to the general rule that the second action must be commenced by the original plaintiff, we must infer that the legislature did not intend CPLR 205 (a) to broadly apply to any party that seeks to vindicate the same rights."* (at 8-9)

> *"CPLR 205 (a) does not apply and HSBC's failure to commence an action within the statute of limitations is fatal."* (at 13)

FACTUAL BACKGROUND

DB Structured Products sponsored a residential mortgage-backed securities transaction involving approximately 8,800 mortgage loans and made representations and warranties concerning the loans as of the March 28, 2006 closing date. The loans were transferred into a trust, with HSBC serving as trustee, and the governing agreements required notice, cure, and repurchase procedures for breaches. Two certificateholders commenced a prior action on behalf of the trust, but HSBC later attempted to substitute itself as plaintiff after the limitations period had expired. HSBC then brought the present action, seeking to use CPLR 205(a) to obtain the benefit of the prior filing.

PROCEDURAL HISTORY

Two certificateholders commenced the prior action against DB Structured Products on the limitations deadline, asserting claims on behalf of the trust. The prior action was dismissed, and this Court affirmed dismissal in ACE Securities Corp., Home Equity Loan Trust, Series 2006-SL2 v. DB Structured Products, Inc., 25 NY3d 581

(2015), holding that the claims accrued on the transaction closing date and that the certificateholders had not validly commenced the action because they failed to comply with the contractual repurchase protocol. After the limitations period expired, HSBC commenced the present action within six months of the prior dismissal, invoking CPLR 205(a). Supreme Court dismissed the action, the Appellate Division affirmed, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- ACE Securities Corp., Home Equity Loan Trust, Series 2006-SL2 v. DB Structured Products, Inc., 25 NY3d 581
- Reliance Ins. Co. v. PolyVision Corp., 9 NY3d 52, 57-58
- George v. Mt. Sinai Hosp., 47 NY2d 170, 175, 177, 179
- Streeter v. Graham & Norton Co., 263 NY 39, 43-44
- Carrick v. Central Gen. Hosp., 51 NY2d 242, 249, 252
- Matter of Marian T. (Lauren R.), 36 NY3d 44, 49
- Matter of Lemma v. Nassau County Police Officer Indem. Bd., 31 NY3d 523, 528
- Majewski v. Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 583, 587
- Town of Aurora v. Village of E. Aurora, 32 NY3d 366, 372-373
- Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs., 5 NY3d 36, 43
- Kimmel v. State of New York, 29 NY3d 386, 394
- Commonwealth of the N. Mariana Is. v. Canadian Imperial Bank of Commerce, 21 NY3d 55, 60
- Malay v. City of Syracuse, 25 NY3d 323, 327
- Gaines v. City of New York, 215 NY 533, 539
- Matter of Goldstein v. New York State Urban Dev. Corp., 13 NY3d 511, 521
- U.S. Bank Natl. Assn. v. DLJ Mtge. Capital, Inc., 2022 NY Slip Op 01866
- U.S. Bank N.A. v. DLJ Mtge. Capital, Inc., 33 NY3d 72, 80